New Jersey Department of Education
Office of Special Education Programs

Pocket PRISE

Introduction

This procedural safeguards notice is written in language to be understood by the general public. For a reading in the actual language of the law/regulations, one should refer to State and Federal law/regulations.

The parent of a child who needs or may need special education and related services can expect the school to follow certain steps. These steps are to protect the child's right to be educated and are found in State and Federal law. The parent must be given a copy of these steps one time each year and when:

- A child is referred for evaluation (testing) for the first time.
- A parent requests an evaluation or requests a copy of these safeguards.
- A hearing is requested or a complaint has been filed for the first time in a school year.
- A change in a child's program is being made because a school rule was broken.

The copy of these steps, the procedural safeguards, shall fully tell about:

A. Evaluation of a child by a person who does not work for the school district. This is called an independent educational evaluation.
B. Giving the parent a copy in writing of what the school is offering or refusing to do about a child's program.
C. Getting parent permission before the school gives tests or special education services to a child.
D. Seeing and getting a copy of a child's school record.
E. Asking for a hearing.
F. A child's program during the time it takes to go to a hearing.
G. Steps that the school must follow before putting a child in a different school program, an interim alternative educational setting, because the child broke a school rule.
H. Placing Your Child in a Nonpublic (Private School) – Due to a Disagreement.
I. Mediation.
J. Due Process Hearings.
K. An expedited hearing for disciplinary matters.
L. Bringing a case to court.
M. Attorneys' fees.
N. Complaints.

When a child turns eighteen years old, the child has all rights the parent used to have. A child will not get the rights if a court has said the child is not able to decide in a way that is good for the child. The school shall give any notice required by the law to both the child and the parent even though the child would now have the rights that the parent used to have.

A. Testing of the Child by a Person Who Does Not Work for the School: Independent Educational Evaluation

1. The parent has the right to have the school pay for testing (evaluation) done by a person who does not work for the school, if the parent disagrees with the testing done or arranged by the school. The school may ask the parent for the reason why the parent objects to the testing done by the school. An explanation by the parent is not required. If the school decides not to pay for the testing, the school must ask for a hearing without delay. At the hearing, the school must show that its testing is appropriate. If the administrative law judge decides that the school's testing is appropriate, the school does not have to pay for the testing that the parent wants done. However, the parent still has the right to have testing done by a person who does not work for the school, but the school does not have to pay for it.

2. The parent has the right to get testing done by a person who does not work for the school. The parent may give the results of the tests to the school. The testing must be considered by the school when deciding on a child's program, if the testing meets the standards used by the school. The test results may be used at a due process hearing.

3. An administrative law judge may ask that a child be tested by a person who does not work for the school. The school must pay for this testing.

4. When the school pays for testing that is done by a person who does not work for the school, the testing must meet the standards for testing used by the school. This includes the location where the testing is done and the skills of the person doing the testing. The school may not set additional standards or timelines when the school pays for testing that is done by a person who does not work for the school. The standards of the school must not interfere with a parent's right to have the testing done by a person who does not work for the school.

5. If the parent asks, the school shall tell where to get testing done by a person who does not work for the school and what the standards are for such testing.

B. Getting in Writing What the School has said About a Child's Program: Prior Written Notice

1. The parent has the right to get in writing a copy of what the school has proposed about a child's program at an IEP meeting. This is called prior written notice.

   The notice shall be sent to the parent no later than 15 days after the meeting and at least 15 days before the IEP team wants to begin, change, or refuses to change:

   (a) the referral of the child for special education;
   (b) the evaluation of the child;
   (c) eligibility of the child;
   (d) the child's school program; or
   (e) the child's right to a free school program that meets the child's needs.

2. The written notice must tell:

   (a) exactly what the IEP team wants to do or refuses to do;
   (b) why the IEP team wants to or refuses to do what was said;
   (c) the other options the IEP team talked about and the reasons why those were not done;
   (d) about each test or report that the IEP team used in deciding what to do or not to do;
   (e) the other factors that the IEP team thought about before deciding what to do or not to do;
   (f) that the parent is protected by the law and how to get a copy of these protections; and
   (g) who to contact to get help in understanding these protections.

3. The notice must be written in a way that would be easy to read and understand, unless it is clearly not possible to do so. If the parent's spoken word is not a written one, the school must make sure:

   (a) the notice is given orally or by another way to the parent; and
   (b) the parent understands what is in the notice.

C. Parent Consent

1. Consent means that:

   (a) the parent has been fully informed about why the school seeks permission;
   (b) the parent understands and agrees in writing to let the school test the child or place the child in a program. If school records are to be sent to someone, the school tells the parent what will be sent and to whom it will be sent;
   (c) the parent understands that he or she willingly gives permission and permission may be withdrawn at any time. If the parent withdraws permission, the withdrawal does not effect the actions taken or the services provided to the child during the time the school district had the permission of the parent.

2. The evaluation (testing) is done to find out:

   (a) if a child is disabled; and
   (b) the kind and amount of special education and related services a child needs.

   Certain tests or ways of evaluating are selected for each child. These tests are not the tests that are given to all children in a school, grade or class.

3. Parent permission must be given before:

   (a) the school evaluates a child;
   (b) a child gets special education for the first time;

(c) the child's records are disclosed to a person, school or agency outside the school; and

(d) each time the school wants to use your medical insurance to provide services to your child.

Except for these four times, the school cannot use the reason that a parent has not given permission to refuse the parent or the child any services that would help the parent or the child. Parent permission to test a child for the first time shall not be taken to mean that the parent has given permission to give a child special education and related services.

When the school wants parent permission, the school must tell the parent:

(a) of the right to not give permission and if the parent does give permission, the parent can take it back;

(b) if the parent does not respond to the school in ten school days, the school will take that to mean that the parent does not give permission; and

(c) if the parent does not give permission and asks for a mediation or a hearing, the child's school program will not change during the time it takes to go to a mediation or to a hearing.

If parent permission is not given to evaluate the child for the first time, the school must take steps to make sure that the child gets a proper education. This may mean the school asking for mediation or a hearing.

If the administrative law judge decides in favor of the school, the school may evaluate the child without parent permission. The parent may go to either State Superior Court or Federal District Court to stop the school from evaluating the child.

The school must get parent permission before reevaluating a child. Except the school does not need to get permission, if the school can show that it made a good effort to get permission and the child's parent did not answer the school. The school must have a record of its efforts to get parent permission.
This record might include:

(a) telephone calls tried or made and the results of those calls;

(c) copies of letters sent to the parent and any letters sent back to the school by the parent; and

(d) visits made to the parent's home or workplace and results of those visits.

If the parent refuses consent for reevaluation, the school may go to mediation or a hearing to see that the child gets a reevaluation.

4. Parent permission is not needed before:

(a) looking at the records of the child that the school already has when the school is evaluating or reevaluating a child; or

(b) giving a test or other means of evaluation that is given to all children unless the school gets parent permission from all parents before giving a test.

D. Seeing and Getting the School Records of a Child

1. The parent has the right to:

(a) look at all records which are kept or used by the school that deal with:

- the child being disabled;
- the child being evaluated;
- the child being placed in a program; and
- the child's right to a free appropriate public education.

The school may take for granted that the parent has the right to look at records unless the school has been told that the parent does not have this right according to State law.

The school must let the parent look at the records as soon as possible and not later than 10 school days after a parent asks.

The school must, in spite of the timelines noted above, comply with a parent request as soon as possible and before any IEP meeting or hearing;

(b) expect the school to explain and tell about the meaning of the records;

(c) get a copy of the records. The parent should ask for a copy in writing. The school may charge for copies. The school may not charge for copies if having to pay the fee would keep the parent from looking at the records. The school may not charge a fee to look for records;

(d) have a person acting for the parent look at the records; and

(e) look at and be told of certain data about his or her child when any record has data on more than one child. The parent may only look at data about his or her child.

E. Asking for a Hearing: A Way to Solve a Dispute

1. A parent or the school may ask, in writing, for a hearing to review what was decided by the IEP team. When a parent asks for a hearing, the school shall tell the parent about the use of mediation as a means to settle the issues. The school shall also tell the parent of any free or low-cost legal and other services related to the matter that are available in the area if:

(a) the parent asks for this; or

(b) the parent or the school asks for a hearing.

2. When a party, or the attorney for the party, asks for a hearing, the party must give:

(a) the child's name and address (if the child is homeless the available contact information for the child) and the name of the child's school;

(b) the nature of the problem relating to what is proposed to happen or to be changed and facts about the problem; and

(c) what will solve the problem, if known.

3. A party may not have a hearing until the party gives the information noted in #2 of this section. The party receiving the request for hearing shall have 15 calendar days from the receipt of the request to notify the OSEP and the other party in writing that the receiving party believes that the request for hearing does not contain the required information. The OSEP will transmit the challenge to the administrative law judge, who, within 5 calendar days of receiving this notice, must decide if the required information has been given and immediately notify the parties of that decision. If the receiving party does not notify the OSEP, the request for hearing would be considered to contain the required information.

4. The school shall have a form for the parent to fill out to ask for a hearing. The form shall tell what needs to be included. The school shall keep this form private.

5. The party asking for the hearing shall send a letter or the form requesting the hearing to the other party and send a copy to:

New Jersey Department of Education
Office of Special Education Programs
P.O. Box 500
Trenton, NJ 08625-0500

6. A party may amend its request for hearing only if:

(a) the other party consents in writing to the change and is given the chance to resolve the issues through a meeting as noted in #7 of this section; or

(b) the administrative law judge gives permission which may only be given at any time not later than 5 calendar days before the hearing begins.

If a party files an amended request for hearing, the timelines for the meeting noted in #7 of this section and for the solving the parent's issues in #13 of this section, begin again with the filing of the amended request for hearing.

7. Within 15 calendar days of getting the parent's request for a hearing that gives the information as noted in #2 of this section, the school must set up a meeting with the parent and the IEP members who have information about the facts that are noted in the parent's request for the hearing. The school must have a person at the meeting who has the authority to make a decision for the school. The school may not bring an attorney unless the parent brings an attorney.

8. At the meeting, the parent will talk about the request

for hearing and give the facts and the reasons why the hearing was requested. The meeting will give the school the chance to resolve the issues. This meeting does not have to be held, if:

(a) the parent and the school decide, in writing, not to have the meeting; or

(b) the parent and the school decide, within 15 calendar days of getting the parent's request for hearing, to go to mediation. (See Section I.)

9. If at the meeting the parent and the school solve the issues, an agreement will be put in writing and signed by the parent and the person from the school who has the authority to make the agreement. The parent or the school will have 3 business days from the signing of the agreement to change their minds and not have to go along with the agreement. The agreement is binding on both the parent and the school and either the parent or the school may go to State or Federal court to have the agreement enforced.

10. If the school has not sent prior written notice to the parent (See Section B.) regarding the issues noted in the parent's request for hearing, the school shall, within 10 calendar days of receiving the parent's request for hearing, send the parent a response that shall tell:

(a) why the IEP team wants to or refuses to do what was noted in the request for hearing;

(b) the other options the IEP team talked about and the reasons why those were rejected;

(c) about each test or report that the IEP team used in deciding what to do or not to do; and

(d) the other factors that the IEP team thought about before deciding what to do or not to do.

11. If prior written notice had been sent to the parent before the parent requested the hearing, the school shall, within 10 calendar days of receiving the parent's request for hearing, send to the parent a response that specifically addresses the issues noted in the request for hearing.

12. If the school requested the hearing, the parent shall, within 10 calendar days of receiving the school's request for hearing, send to the school a response that specifically addresses the issues noted in the request for hearing.

13. If the school has not solved the parent's issues to the parent's satisfaction within 30 calendar days of receiving the parent's request for the hearing, the hearing may begin. The 45-calendar-day timeline for the hearing (See Section J. #10) will begin at this time.

14. If the school requests the hearing:

(a) the OSEP will offer mediation and if the parties agree, the 45 day timeline will commence at the end of the mediation activities, when the case is transmitted to the Office of Administrative Law (OAL); or

(b) if the parties do not agree to mediation, the 45 day timeline will commence and case will be transmitted to the OAL.

(c) The notice will be considered sufficient unless the parent challenges the sufficiency of the school's request for a hearing within 15 days of receipt of the notice. (Section E. #2 and #3).

F. Child's School Program During a Hearing

1. When a hearing has been asked for, the child must stay in the school program with the same services that the child was getting before the parent and the school had a disagreement. The child must stay in this program until the matter is settled unless the parent and the school agree to change the school program. If the child is to enter public school for the first time, the child must be able to go to school if the parent wants the child to go. The child will be able to go to school until the problem is solved. If an administrative law judge agrees with the parent that a change to the child's school program is proper, the order of the judge must be carried out, even if a court review (See Section M.) has been asked for.

2. If the school or the parent asks for a hearing,

(a) after a child was placed in an interim alternative educational setting (IAES) for not more than 45 school days

- by the school for reasons as noted in Section G. #5

or

- by an administrative law judge as noted in Section H. #10; or

(b) after the school, the parent and relevant members of the IEP team decided that a child's behavior was not related to the child's disability while the child is in the IAES (See Section G. #6),

the child must stay in the IAES until the administrative law judge decides differently or until the end of the specified time (which shall not be more than 45 school days), whichever comes first, unless the parent and school agree to change the school program.

If the school wants to change the child's program after the specified time in the IAES is up and asks for a hearing, the child would return to the school program that the child was in before being placed in the IAES while the hearing is held.

G. Placing a Child in an Interim Alternative Educational Setting (IAES), a Different School Program

1. The school may consider any special concerns for a child when deciding to change the school program of a child who broke a school rule.

2. The school may remove a child who breaks a school rule from the current program to an IAES, another setting, or suspension, for not more than 10 school days.

3. If the school seeks to change a child's placement for more than 10 school days and the behavior that led to this intended change was not caused by the child's disability, the child may be disciplined in the same way and for the same amount of time that would be applied to a child who is not disabled.

4. A child that is removed from his current placement under #5 of this section, regardless of whether the behavior was related to the child's disability, or under #3 of this section shall:

(a) continued to receive instruction so as to enable the child to continue in the general education coursework, even though the child is in another setting, and to progress toward meeting the goals in the IEP; and

(b) receive, as appropriate, a functional behavior assessment (FBA) (review how a child behaves) and behavioral intervention services and modifications (a plan to improve the child's behavior so that the behavior that resulted in the change of the child's program does not happen again).

5. A school may place a child in an IAES for not more than 45 school days without regard to whether the behavior that resulted in the child being placed in the IAES was caused by a child's disability, in cases where a child:

(a) carried a weapon to or at school, on school grounds or to or at a school activity;

(b) knowingly had, used, sold or tried to buy illegal drugs at school, on school grounds or at a school activity; or

(c) has caused serious bodily injury upon another person at school, on school grounds or at a school activity.

6. Within 10 school days of any decision to change a child's placement for more than 10 school days because the child broke a school rule, the school, with the parent and relevant members of the IEP team (to be determined by the parent and the school) shall review all relevant information in the child's school file, including the IEP, teacher observations and any relevant information provided by the parent to determine if the behavior in question was:

(a) caused by, or was directly or to a large extent related to the child's disability; or

(b) the direct result of the school's failure to implement the IEP.

If the team determines that either of the above, (a) or (b), applies to the child, the behavior in question shall be determined to be caused by the child's disability.

This decision is known as the manifestation determination (MD).

7. If the team noted above in #6 of this section decides the behavior in question was caused by the child's disability, the IEP team shall:

   (a) if the school had not already conducted an FBA before the behavior in question occurred, conduct an FBA and put into effect a behavior intervention plan (BIP) (a plan to improve the child's behavior so that the behavior that resulted in the change of the child's program does not happen again);

   (b) if a BIP is already in place, review the BIP and modify it, as necessary, to address the behavior in question; and

   (c) except as noted in #5 in this section, return the child to the program that the child was in before being removed unless the school and the parent agree to a change in the child's placement as part of the revised BIP.

8. Not later than the date on which the decision is made to change the child's placement as noted in #3 and #5 of this section, the school shall tell the parent of that decision and provide the parent with a copy of this procedural safeguards statement.

9. When the school orders a child to an IAES for not more than 45 school days as noted in #3 and #5 in this section, the school must hold an IEP meeting to determine the IAES.

10. If the school thinks that it is not safe for the child to go back to the school program that the child was in before being placed in the IAES, the school may ask for a hearing that is done quickly, an "expedited hearing." The administrative law judge can decide to:

    (a) return the child to the school program that the child was in before being placed in the IAES; or

    (b) return the child to the IAES; or

    (c) place the child in another school program.

    The administrative law judge may not order a placement in an IAES for more than 45 school days at any one time. However the school may ask for this process to be repeated, as necessary. An administrative law judge may order a change to an IAES in an expedited hearing (See Section L.) if the judge decides that keeping the child in the current school program will, to a large extent, likely result in injury to the child or to others.

H. Placing Your Child in a Nonpublic (Private) School – Due to Disagreement

1. A parent, who on his or her own, places a child, who at one time received special education through the public school, in a private school and seeks a return of the money for the costs of the private school from the public school may receive the costs from the public school:

   (a) by order of a court; or

   (b) by the order of an administrative law judge

   if it is decided that:

   (a) the school had not made a program that could meet the child's education needs available to the child in a timely manner before the parent enrolled the child in the private school; and

   (b) the private school program for the child meets the child's education needs.

   The private school program provided to the child may be found to be a proper program for the child by an administrative law judge or a court even if the private school does not meet the State standards that apply to the education provided by the school district.

2. The reimbursement of the costs for the private school may be refused or reduced:

   (a) if at the last IEP meeting that the parent attended before taking the child out of the public schools, the parent did not

   - tell the IEP team of not wanting the program offered by the school;
   - state the concerns about the program offered by the school; and
   - state the intent to enroll the child in a private school at public expense;

   or

   if 10 business days (including any holidays that occur on a business day) before taking the child out of the public school, the parent did not

   - give notice in writing to the school of not wanting the program offered by the school;
   - state the concerns about the program offered by the school; and
   - state the intent to enroll the child in a private school at public expense;

   (b) if, before the parent took the child out of the public school, the school told the parent, in writing, of its intent to evaluate the child, giving the purpose of the evaluation, and the parent did not make the child available for evaluation; or

   (c) upon a court deciding that the parent did not act within reason.

3. The reimbursement of the costs:

   (a) Costs shall not be reduced or refused because the parent did not tell the school because:

   - the school kept the parent from giving notice, as noted in #2(a) of this section;
   - the parent had not received notice from the school that the parent had to tell the school, as noted in #2(a) of this section, before putting the child in the private school if the parent wanted to get the school district to return the costs of the private school; or
   - having to tell the IEP team, as noted in #2(a) of this section, would likely result in physical harm to the child.

   and

   (b) may, in the finding of the administrative law judge or the court, not be reduced or refused because the parent did not tell the school because:

   - the parent cannot read and write in English; or
   - having to tell the IEP team, as noted in #2(a) of this section, would likely result in serious physical or emotional harm to the child.

I. Settling a Dispute When the Parent and the School Do Not Agree: Mediation

1. Mediation is a way to settle a dispute when the parent and the school do not agree on:

   (a) how or whether a child is disabled;

   (b) evaluation of the child;

   (c) placing the child in a special education program; or

   (d) any other matter related to providing the child with a free school program that meets the needs of the child.

   The parent and the school have a choice to go to mediation. The mediation can not be used to:

   (a) deny or delay the parent's right to a hearing; or

   (b) deny any other rights that the parent has under the State or Federal special education laws.

   Before filing a complaint (see Section N.) or before asking for a hearing (see Section E.), the parent and the school may ask for mediation by sending a letter to:

   New Jersey Department of Education
   Office of Special Education Programs
   P.O. Box 500
   Trenton, NJ 08625-0500

   The Office of Special Education Programs (OSEP)

has a staff of mediators and will assign a mediator on a rotating basis who:

(a) is trained in mediation;

(b) does not show favor to either the parent or the school; and

(c) knows about the special education laws.

The mediator will try to help settle the concerns of the parent and the school. The mediation shall be set within 30 days from the time OSEP gets the letter from the parent or the school that asks for the mediation. The mediation will be held in a place that is reasonably convenient for the parent.

2. If the parent and the school reach agreement on the issues, what they have agreed to will be put in writing and signed by the parent and the person from the school who has the authority to sign the agreement. The mediation agreement shall state that: the agreement is legally binding and can be enforced in State or Federal court; and what the parent and the school talk about at the mediation must be kept private and may not be used as proof in any hearing or court action that may follow the mediation.

J. Due Process Hearings: A Means to Solve Disputes

1. The law limits the time period for making a request for a hearing. The parent or the school has two years to ask for a hearing from the time the party knew or should have been known about what was proposed or refused:

(a) to consider or find that the child is disabled;

(b) to evaluate the child;

(c) to place the child in a school program that meets the child's needs; or

(d) to provide the child with the right to a free education that meets the child's needs.

If the parent is not given a copy of the "Parental Rights in Special Education" booklet (prior to July 1, 2005) or this procedural safeguards statement (after July 1, 2005) the two-year limit shall start at the time the copy is properly given to the parent. The two-year limit would not apply if the school told the parent that the issues had been solved when they actually had not been solved.

2. The school shall tell the parent of any free or low-cost legal services and other services related to the matter that are available in the area if:

(a) the parent asks for this; or

(b) the parent or the school asks for a hearing.

3. The hearing shall be held by an administrative law judge who:

(a) is not an employee of

- the New Jersey Department of Education; or
- the school district where the child goes to school or the school district responsible for the child's education;

(b) does not have a personal or professional interest which would get in the way of his or her being fair in the hearing;

(c) has knowledge and is able to understand the Federal and State special education laws and regulations and the way these laws are understood by Federal and State courts;

(d) has knowledge and is able to conduct a hearing in accordance with appropriate, standard legal practice; and

(e) has knowledge and is able to make and write decisions in accordance with appropriate, standard legal practice.

A person who would be an administrative law judge is not an employee solely because he or she is paid by the New Jersey Department of Education to act as a hearing officer.

4. The New Jersey Department of Education, OSEP, and New Jersey Office of Administrative Law shall keep a list of the persons who serve as hearing officers. This list shall state the training of each of those persons.

5. The parent has the right to have the child at the hearing and to open the hearing to the public. The record of the hearing and the findings of fact and decisions noted in #6(e) and (f) of this section are at no cost to the parent.

6. The parent and the school have the right to:

(a) bring and be helped by an attorney and persons with special training about children who are disabled;

(b) give proof, question and cross-examine any witness;

(c) make witnesses attend the hearing;

(d) not allow any proof to be given at the hearing that had not been given to that party no less than five business days before the hearing. Evaluations that have been done and suggestions from the evaluations that one intends to use at the hearing shall be given at least five business days before the hearing.

(e) a written, or, at the choice of the parent, electronic word-for-word record of the hearing; and

(f) written, or at the choice of the parent, electronic findings of fact and decisions.

7. The administrative law judge may keep the parent or the school from giving any proof at the hearing without the permission of the other party if the parent or the school fails to meet the timeline in #6(d) of this section.

8. The party that asked for the hearing shall not be allowed to raise issues at the hearing that were not raised in the request for the hearing unless the other party agrees.

9. A decision made by the administrative law judge shall be made on:

(a) substantive grounds, that is, on legal rights and principles based on whether the child received a free appropriate public education; and/or

(b) errors in procedure, if such errors kept the child from receiving a free appropriate public education or kept the parent from being meaningfully involved in the decisions about the child's right to a free appropriate public education. The administrative law judge may order a school to follow the procedures, even if the judge found that the child was not kept from receiving a free appropriate public education.

10. Within 45 calendar days of the start of the hearing timeline, a final decision in the hearing shall be reached and a copy of the decision shall be mailed to each of the parties. The administrative law judge may allow extra time beyond the 45-calendar-day timeline when asked for by the parent or the school. The hearing shall be held at a time and place that would make it easy for the parent and child to attend.

11. The decision of the hearing is final, unless the parent or the school asks for a review from either State Superior Court or Federal District Court.

12. The State Department of Education shall, after taking out any data that would make the identity of the child easily known, send the written findings of fact and decisions to the State Advisory Council for Special Education and also make them available to the general public.

13. As part of a request for a due process hearing or expedited due process hearing (See Section K below), a party may request Emergency Relief. Emergency Relief is an immediate and temporary (interim) decision on an issue related to a due process hearing. Requests for Emergency Relief should only be made to affect the student's eligibility, program, placement or related services on a temporary basis because the student will suffer irreparable harm if no action is taken before a decision in the underlying due process hearing is issued. An applicant for Emergency Relief must also demonstrate that they are likely to prevail in the due process hearing, that the party requesting the emergent order has a settled legal right to what is sought and that, when the parties' interests are balanced, the party requesting relief will suffer more harm than the other party. All requirements set forth above with respect to a request for a due process hearing remain applicable to the underlying request for a due process hearing when a request for Emergency Relief is filed along with such

a request.

K. Due Process Hearings Without Delay: Expedited Hearings

1. The steps and the way in which an expedited due process hearing is held are as noted in Sections E. (excluding #14) and K. except as noted in this section.

2. An expedited hearing will be set up when a hearing is asked for as follows:

   (a) the school thinks that keeping the child in the current school program is to a large extent likely to result in injury to the child or to others and the school wants to put the child in an IAES (See Section H.) for not more than 45 school days;

   (b) the child is placed in an IAES and the school wants to change the child's school program at the end of the IAES because the school believes it is a danger for the child to be in the school program that the child was in before being placed in the IAES and the school asks for an expedited hearing;

   (c) the parent believes the child has been kept out of school for more than 10 days in a row without the school following the proper steps;

   (d) the parent believes the child has been kept out of school for more than 10 days in a school year without the school following the proper steps;

   (e) the parent does not agree with the school placing the child in an IAES; or

   (f) the parent does not agree with the MD (See Section H. #6).

3. Upon a request for a hearing for any of the matters noted above in #2 of this section, the hearing shall occur within 20 school days of the date the hearing is requested and shall result in a decision within 10 school days after the hearing. The administrative law judge may order a change in placement of the child as follows:

   (a) return the child to the placement from which the child was removed; or

   (b) place the child in an IAES for not more than 45 school days if it is determined that keeping the child in the current placement will more than likely result in injury to the child or to others.

4. Each party to a hearing:

   (a) has the right to keep any proof from being presented at the hearing that has not been given to the other party at least 2 business days before the hearing; and

   (b) shall give to all other parties all evaluations done to date and the suggestions made from the evaluations that the party wants to use at the hearing at least 2 business days before the hearing.

L. Reviews by a Court: Civil Actions

1. If the parent or the school is not satisfied with the findings and final decision made in the hearing, they have the right to a review within 90 calendar days of receipt of the final decision and order from either State Superior Court or Federal District Court without taking into account the damages claimed or the relief sought. The court:

   (a) shall get the records of the hearing;

   (b) shall hear more proof when asked by the school or the parent; and

   (c) basing its decision on the greater amount of proof, shall order a change as the court decides is proper.

2. Nothing in the Federal law (IDEA) regarding the education of children who are disabled limits the rights that a parent or the school has under other Federal laws that protect the rights of children who are disabled. However, before filing for a review by a court, a final decision of the hearing must be rendered.

M. Attorneys' Fees

1. For any hearing or court review the court may order:

   (a) the school to pay for the attorneys' fees paid by the parent in a matter that is decided in the favor of the parent;

   (b) the attorney of a parent to pay for the attorneys' fees paid for by the school or the State in a matter that is decided in favor of the school or the State, if the attorney of the parent files a request for a hearing or review by the court that is needless, is without good reason, or is without a proper basis; or if the attorney of a parent continued to litigate after it is clear that the matter is needless, is without good reason, or is without a proper basis; or

   (c) the attorney of a parent or the parent to pay the attorneys' fees paid for by the school or the State in a matter that is decided in favor of the school or the State, if the parent's request for hearing or review by the court is made for any improper purpose, such as to harass, to cause unnecessary delay, or needlessly increase the cost of the hearing or the court review.

2. The amount of attorneys' fees that is decided shall be based on rates common in the area in which the hearing or court review arose for the kind and quality of services provided. No extra means may be used in figuring the fees ordered.

3. Attorneys' fees may not be ordered and related costs may not be returned to the parent in any hearing or court review for services provided after the time of a written offer to a parent to settle the matter if:

   (a) the offer is made within the time allowed by Federal rule or, in the case of a hearing, at any time more than 10 calendar days before the hearing begins;

   (b) the offer is not accepted within 10 calendar days; and

   (c) the court finds that the relief finally given to the parent is not more than the offer to settle the matter.

   An order for the return of attorneys' fees and other costs may be made to a parent who succeeds with his or her case and who had good reason for not taking the offer made by the school to settle the matter.

   The return of attorneys' fees may not be ordered for:

   (a) any meeting of the IEP team unless the IEP meeting is held as a result of a hearing or a court review;

   (b) a mediation that is held before a parent asks for a hearing; or

   (c) the meeting to solve the issues held within 15 calendar days of the parent's request for a hearing. (Section E #7).

4. The court may lower attorneys' fees whenever it finds that:

   (a) the parent, during the hearing or the court review, took more time than was needed to settle the dispute;

   (b) the amount of the attorneys' fees goes beyond, without good reason, the hourly rate common in the area for the same type of services by attorneys who compare in skill, reputation, and training;

   (c) the time spent and legal services provided were more than expected for the type of hearing or court review; or

   (d) the attorney for the parent did not give to the school the required data when asking for the hearing.

   The court would not lower attorneys' fees if the court finds that:

   (a) the school or the State without good reason took more time than necessary to reach a final resolution of the hearing or the court review; or

   (b) the procedural safeguards were violated.

N. Filing a Complaint

1. A group or a person may file a signed complaint in writing. The complaint must state:

(a) that the school did not carry out the Federal (IDEA) or the State laws that protect children who are disabled; and

(b) the facts on which the complaint is based.

The group or a person may file a complaint about any matter related to:

(a) the child having a disability;

(b) evaluating the child;

(c) the child's school program; or

(d) the child's right to a free education that meets the child's needs.

The law limits the time period for filing a complaint. The group or a person has one year to file a complaint from the time the party knew or should have known about what was proposed or refused:

(e) to consider or find that the child is disabled;

(f) to evaluate the child;

(g) to place the child in a school program that meets the child's needs; or

(h) to provide the child with the right to a free education that meets the child's needs.

2. A complaint shall be sent to:

New Jersey Department of Education
Office of Special Education Programs
P.O. Box 500
Trenton, NJ 08625-0500

3. The NJ Department of Education shall make a decision about the issues in the complaint within 60 calendar days after the complaint is filed with Department. The 60-calendar-day-limit may be extended if the Department believes that there are special factors in a complaint.

4. The complainant must provide a copy of the complaint to the district or education agency where the alleged violation occurred. The district or education agency will have an opportunity to respond to the allegations.

5. At the discretion of the NJ Department of Education, a district or education agency may be provided the opportunity:

(a) to resolve a complaint filed by a parent that is not systemic or multi-faceted. If the complaint is resolved to the satisfaction of the parent, the parent and district will enter into a written agreement and the complaint will be withdrawn; or

(b) to acknowledge that a violation has occurred and submit a corrective action plan designed to correct the noncompliance. The corrective action plan is subject to approval by the OSEP.

If the resolution activities are not successful, the investigation will continue.

6. In making a decision, the Department shall:

(a) carry out an on-site visit at the school, if the Department believes it must be done;

(b) give the person who filed the complaint the chance to give, orally or in writing, more facts about the complaint;

(c) review all the facts regarding the complaint and decide if the school failed to meet the law; and

(d) send out a decision to the person who filed the complaint. The decision shall rule on each issue raised in the complaint and contain the facts on which the decision was based, how the facts were related to the decision and the reasons for the decision.

7. The carrying out of the Department's decision may include:

(a) assistance to the school district by the Department;

(b) talks to help the parent and the school agree to terms to solve the complaint; and

(c) actions for the school to take to meet the law.

8. If the Department has found that the school failed to provide appropriate services to a child, the Department shall address:

(a) how to make up for services that had not been given to a child, which may include paying the parent for the costs of those services that had been paid by the parent or other proper actions related to the needs of the child; and

(b) for system-wide issues, appropriate future provision of services for all children who are disabled.

9. A parent may also request a hearing even if a complaint has been filed, however the Department shall not look into any part of a complaint that is part of the due process hearing, until the final decision of the hearing is made. Any issue in the complaint that is not part of the due process hearing must be resolved following steps noted in #3 in this section. If an issue is raised in a complaint that was already decided in a due process hearing with the same parties, the hearing decision is final and will not be reviewed by the Department. The Department shall inform the person filing the complaint that a review will not be done. If a complaint states that the school has failed to carry out the final decision of the due process hearing, the Department shall resolve the complaint.

7/1/05 – This procedural safeguards statement will be changed if there is a change by further guidance from the United States Department of Education, amendment to state or federal statute or regulation or orders of courts of appropriate jurisdiction.